

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 ERIC GARCIA RODRIGUEZ,

4 Plaintiff,

5 v.

6 CIVIL NO. 03-2238 (RLA)

7 JOSE A. ANDREU GARCIA, et al.,

8 Defendants.

9 **ORDER IN THE MATTER OF DEFENDANTS' MOTION TO DISMISS**
10 **AND MOTION FOR JUDGMENT ON THE PLEADINGS**

11 The Court has before it for disposition the Motion to Dismiss
12 filed pursuant to Rule 12(b) (6) Fed. R. Civ. P. as well as the Motion
13 for Judgment on the Pleadings submitted in accordance with the
14 provisions of Rule 12(c) Fed. R. Civ. P. Based on the briefs
15 submitted by the parties as well as the applicable law, the Court
16 hereby rules as follows.

17 **BACKGROUND**

18 This is an action arising from plaintiff's arrest for having
19 failed to meet his child support obligations. The Amended Complaint
20 (docket No. 48) alleges a due process violation as well as false
21 imprisonment pursuant to 42 U.S.C. § 1983 in addition to local
22 claims. Named defendants are four local marshals as well as Jaime
23 Santiago ("Santiago") and Edwin Perez-Febus ("Perez-Febus"), both
24 supervisors.

25 On October 22, 2002, an Arrest Warrant was issued against
26 plaintiff for having failed to pay child support in the sum of

1 CIVIL NO. 03-2238 (RLA)

Page 2

2 \$27,420.00. The warrant provided that "[o]nce arrested, the defendant
3 **shall be taken before a magistrate** to show evidence of partial
4 payment of \$10,000.000 (the minimum amount required for release).
5 [Absent] evidence of such payment, **the magistrate must order his**
6 **incarceration**". (Emphasis ours).

7 On November 15, 2002, an unknown marshal visited plaintiff's
8 residence looking for him. Inasmuch as plaintiff was not home at the
9 time, the marshal left a message for plaintiff to visit the Marshal's
10 Office located at the Caguas Courthouse as soon as possible.

11 On November 18, 2002, plaintiff visited the Marshal's Office and
12 was allegedly referred to the Arrests Division whereupon he was
13 arrested and taken to the Bayamon Penitentiary where he remained for
14 five days until he was able to post bail.

15 Plaintiff alleges that the failure to take him before a judge
16 prior to his incarceration as commanded by the Arrest Warrant
17 violated his constitutional guarantees to be free from false
18 imprisonment and right to due process.

19 **RULE 12(b) (6)**

20 In disposing of motions to dismiss pursuant to Rule 12(b) (6)
21 Fed. R. Civ. P. the court will accept all factual allegations as true
22 and will make all reasonable inferences in plaintiff's favor.
23 Frazier v. Fairhaven Sch. Com., 276 F.3d 52, 56 (1st Cir. 2002);
24 Alternative Energy, Inc. v. St. Paul Fire and Marine Ins. Co., 267
25 F.3d 30, 33 (1st Cir. 2001); Berezin v. Regency Sav. Bank, 234 F.3d
26

1 CIVIL NO. 03-2238 (RLA)

Page 3

2 68, 70 (1st Cir. 2000); Tompkins v. United Healthcare of New England, Inc., 203 F.3d 90, 92 (1st Cir. 2000).

3
4 Our scope of review under this provision is a narrow one.
5 Dismissal will only be granted if after having taken all well-pleaded
6 allegations in the complaint as true, the Court finds that plaintiff
7 is not entitled to relief under any theory. Brown v. Hot, Sexy and
8 Safer Prods., Inc., 68 F.3d 525, 530 (1st Cir. 1995) cert. den. 116
9 S.Ct. 1044 (1996); Vartanian v. Monsanto Co., 14 F.3d 697, 700 (1st
10 Cir. 1994). Further, our role is to examine the complaint to
11 determine whether plaintiff has adduced sufficient facts to state a
12 cognizable cause of action. Alternative Energy, 267 F.3d at 36. The
13 complaint will be dismissed if the court finds that under the facts
14 as pleaded plaintiff may not prevail on any possible theory.
15 Berezin, 234 F.3d at 70; Tompkins, 203 F.3d at 93.

16 As part of its Rule (12) (b) (6) examination the court is allowed
17 to look at matters outside the pleadings which have been "fairly
18 incorporated within it and matters susceptible to judicial notice"
19 without converting it into a summary judgment petition. In re
20 Colonial Mortgage, 324 F.3d at 15. In other words, in cases where "a
21 complaint's factual allegations are expressly linked to - and
22 admittedly dependent upon - a document (the authenticity of which is
23 not challenged), that document effectively merges into the pleadings
24 and the trial court can review it in deciding a motion to dismiss
25 under Rule 12(b)(6).'" Perry v. New England Bus. Serv., Inc., 347
26

1 CIVIL NO. 03-2238 (RLA)

Page 4

2 F.3d 343, 345 n.2 (citing Beddall v. State St. Bank and Trust Co.,
3 137 F.3d 12, 17 (1st Cir. 1998).
4

5 Hence, we may take into consideration the Arrest Warrant
6 provisions without converting the petition into a summary judgment
7 request.
8

RULE 12(c)

9 Rule 12(c) provides that "[a]fter the pleadings are closed but
10 within such time as not to delay trial, any party may move for
11 judgment on the pleadings." The standard for ruling on a motion filed
12 under Rule 12(c) is essentially the same as that for deciding on a
13 motion to dismiss filed under Rule 12(b) (6). "[T]he trial court must
14 accept all of the nonmovant's well-pleaded factual averments as true,
15 and draw all reasonable inferences in his favor... The motion should
16 not be granted unless it appears beyond doubt that the plaintiff can
17 prove no set of facts in support of his claim which would entitle him
18 to relief." McCord v. Horace Mann Ins. Co., 390 F.3d 138, 141 (1st
19 Cir. 2004) (citations omitted). "Because such a motion calls for an
20 assessment of the merits of the case at an embryonic stage, the court
21 must view the facts contained in the pleadings in the light most
22 favorable to the nonmovant and draw all reasonable inferences
23 therefrom to the nonmovant's behoof (sic)." R.G. Fin. Corp. v.
24 Vergara-Nuñez, 446 F.3d 178, 182 (1st Cir. 2006). "There is no
25 resolution of contested facts in connection with a Rule 12(c) motion:
26 a court may enter judgment on the pleadings only if the properly

1 CIVIL NO. 03-2238 (RLA)

Page 5

2 considered facts conclusively establish the movant's point." *Id.* See
3 *also, Aponte-Torres v. Univ. of Puerto Rico*, 445 F.3d 50, 54 (1st Cir.
4 2006).

5 Hence, under either of the two aforementioned procedural routes
6 the facts as alleged in the complaint are deemed uncontested.
7

SECTION 1983

8 Section 1983 does not create substantive rights but is rather a
9 procedural mechanism for enforcing constitutional or statutory
10 rights. *Albright v. Oliver*, 510 U.S. 266, 114 S.Ct. 807, 127 L.Ed.2d
11 114 (1994); *Cruz-Erazo v. Rivera-Montañez*, 212 F.3d 617, 621 (1st Cir.
12 2000). The statute, i.e., § 1983 "is not itself a source of
13 substantive rights, but a method for vindicating federal rights
14 elsewhere conferred... by the United States Constitution and federal
15 statutes." *Rodriguez Garcia v. Municipality of Caguas*, 354 F.3d 91,
16 99 (1st Cir. 2004) (citing *Baker v. McCollan*, 443 U.S. 137, 144 n.3,
17 99 S.C. 2689, 61 L.Ed.2d 433 (1979)). Hence, it is plaintiffs'
18 burden to identify the particular underlying constitutional or
19 statutory right that is sought to be enforced via judicial
20 proceedings.

21 In order to prevail in a § 1983 claim plaintiff must bring forth
22 evidence that (1) defendant acted "under color of state law" and (2)
23 deprivation of a federally protected right. *Rogan v. City of Boston*,
24 267 F.3d 24 (1st Cir. 2001); *Dimarco-Zappa v. Cabanillas*, 238 F.3d 25,
25
26

1 CIVIL NO. 03-2238 (RLA)

Page 6

2 33 (1st Cir. 2001); Collins v. Nuzzo, 244 F.3d 246 (1st Cir. 2001);
3 Cruz-Erazo, 212 F.3d at 612; Barreto-Rivera, 168 F.3d at 45.
4

5 There does not seem to be a controversy regarding the "state
6 action" requirement in this case. Thus, we must proceed to examine
7 whether plaintiff has sufficiently alleged a violation of federally
8 protected rights.

9 **Supervisory Liability**

10 Prior to addressing the viability of the constitutional rights
11 cited by plaintiff, we must ascertain whether there is any colorable
12 claim against the supervisors in their capacity as such.

13 The doctrine of *respondeat superior*, whereby liability is
14 imposed on employers for the acts or omissions of their employees is
15 inapposite in actions brought under § 1983. Supervisors will be held
16 accountable under this provision solely "on the basis of [their] own
17 acts or omissions". Barreto-Rivera, 168 F.3d at 48; Diaz v. Martinez,
18 112 F.3d 1, 4 (1st Cir. 1997); Maldonado-Denis v. Castillo-Rodriguez,
19 23 F.3d 576, 581 (1st Cir. 1994); Gutierrez-Rodriguez v. Cartagena,
20 882 F.2d 553, 562 (1st Cir. 1989). "[O]nly those individuals who
21 participated in the conduct that deprived the plaintiff of his rights
22 can be held liable." Cepero-Rivera, 414 F.3d at 129.

23 Rather, "[s]uch liability can arise out of participation in a
24 custom that leads to a violation of constitutional rights, or by
25 acting with deliberate indifference to the constitutional rights of
26 others." Diaz v. Martinez, 112 F.3d at 4 (citations omitted).

1 CIVIL NO. 03-2238 (RLA)

Page 7

2 Further, in order for plaintiff to prevail he must bring
3 evidence of a casual connection or relationship between the alleged
4 misconduct and the supervisor's acts or omissions. "A supervisory
5 officer may be held liable for the behavior of his subordinate
6 officers where his action or inaction [is] affirmative[ly]
7 link[ed]... to that behavior in the sense that it could be
8 characterized as supervisory encouragement, condonation or
9 acquiescence or gross negligence amounting to deliberate
10 indifference." Wilson v. Town of Mendon, 294 F.3d 1, 6 (1st Cir. 2002)
11 (citations and internal quotations omitted); Figueroa-Torres v.
12 Toledo-Davila, 232 F.3d 270, 279 (1st Cir. 2000); Barreto-Rivera, 168
13 F.3d at 48; Maldonado-Denis, 23 F.3d at 582; Gutierrez-Rodriguez, 882
14 F.2d at 562.

15 Plaintiff claims that the two named supervisors are liable both
16 in their supervisory role as well as based on their own conduct.
17 However, there are no allegations in the amended pleading which would
18 even remotely tie any acts or omissions on the part of Santiago
19 and/or Perez-Febus - in their capacity as supervisors - to the claims
20 asserted in the complaint. The mere fact that these defendants were
21 supervisors of any or all of the other named defendants does not
22 automatically establish a colorable claim against them for their
23 subordinates' misconduct.

24 Specifically, the Amended Complaint charges Santiago and Perez-
25 Febus as follows:

26

1 CIVIL NO. 03-2238 (RLA)

Page 8

2 [Codefendants] were the supervisors of the agents who
3 participated in the events referred [in the complaint].
4 They were responsible for their **own** illegal actions to
5 plaintiff **and** in their **supervisory capacity** for their
6 deliberate indifference to [plaintiff's] civil rights.
7

8 Amended Complaint ¶ 5 (emphasis ours).
9

10 Defendants Perez Febus, Aviles, Aldebol, and/or
11 Maldonado Santiago sent plaintiff to the Arrests Division
12 of the Office. [D]efendants Santiago and/or Salabarria and
13 the other defendants arrested plaintiff, placed him in an
14 official vehicle and transported him to the Bayamon
15 Penitentiary Institution. Defendants told plaintiff he was
16 going to stay there until he paid the \$10,000.00 the
17 warrant ordered.
18

19 Amended Complaint ¶ 15.
20

21 In opposition to the requests for dismissal plaintiff argues
22 that the supervisors "knew or should have known that defendants
23 Salabarria and Santiago were improperly trained, had a poor
24 psychological profile and social history and background, with an
25 emotional inclination to violence and, thus, are tightly linked to
26 the violation of plaintiff's constitutional rights." Opposition to
Defendants' Motion for Judgment on the Pleadings (docket No. 63) p.7.
This argument, however, has no basis on the bare allegations in the
complaint which we transcribed *ante*.

1 CIVIL NO. 03-2238 (RLA)

Page 9

2
3 We also note that it is almost impossible to ascertain from a
4 reading of the Amended Complaint who did what to whom in this case.
5 The allegations in the pleading are sketchy and the information
6 proffered in the motion requesting leave to amend the complaint and
7 those filed in opposition to the petitions for dismissal seem to have
8 contradictory information as to who were the key players in the
9 events giving rise to this litigation. However, one thing remains
10 clear, under the facts as pleaded plaintiff may not prevail on a
11 supervisory liability theory against either Santiago and/or Perez-
12 Febus.

13 Accordingly, the allegations against Santiago and Perez-Febus in
14 their capacity as supervisors¹ in this case are hereby **DISMISSED**.

15 **Fourth Amendment**

16 The right to be free from false imprisonment stems from the
17 Fourth Amendment's protection against unreasonable searches and
18 seizures. Peña-Borrero v. Estremeda, 365 F.3d 7, 13 n.8 (1st Cir.
19 2004). In order to prevail in his false imprisonment claim plaintiff
20 would need to establish that: "(1) the defendant intended to confine
21 [him]; (2) [he] was conscious of the confinement; (3) [he] did not
22 consent to the confinement; and (4) the defendant had no privilege to
23 cause the confinement." Calero-Colon v. Betancourt-Lebron, 68 F.3d
24 1, 3 n.6 (1st Cir. 1995).

25
26 ¹ This finding is without prejudice of their alleged direct
participation in plaintiff's imprisonment.

1 CIVIL NO. 03-2238 (RLA)

Page 10

2
3 Inasmuch as we are required to accept plaintiff's facts as
4 proffered we must assume that the arresting officers had no authority
5 under the terms of the warrant to incarcerate plaintiff. The warrant
6 solely empowered the marshals to arrest plaintiff and to deliver him
7 before a judge. The authority to imprison plaintiff lay with the
8 court, not the marshal.

9 Hence, defendants' request for dismissal of the false
10 imprisonment claim is **DENIED**.

11 **Due Process**

12 Defendants allege that the Fifth Amendment protection is limited
13 to actions by the federal government. Even though it is not yet clear
14 whether due process safeguards apply to Puerto Rico under the Fifth
15 or the Fourteenth Amendments to the U.S. Constitution, regardless of
16 its constitutional source, the essence of the protection is the same
17 under both. Tenoco Oil Co., Inc. v. Dep't of Consumer Affairs, 876
18 F.2d 1013, 1017 n.9 (1st Cir. 1989); Santana v. Collazo, 714 F.2d
19 1172, 1174 n. 1 (1st Cir. 1983); Wehran-Puerto Rico v. Municipality
20 of Arecibo, 106 F.Supp.2d 276, 287 n.25 (D.P.R. 2000).

21 In order to properly assert a procedural due process claim under
22 § 1983, plaintiff must show that: (1) he had a property interest and
23 (2) that defendants, acting under color of state law, deprived him of
24 that property interest without providing him with a constitutionally
25 adequate procedure. Aponte-Torres v. Univ. of P.R., 445 F.3d 50, 56
26 (1st Cir. 2006); Licari v. Ferruzzi, 22 F.3d 344, 347 (1st Cir. 1994);

1 CIVIL NO. 03-2238 (RLA)

2 Page 11

3 Rumford Pharmacy v. City of East Providence, 970 F.2d 996, 999 (1st
4 Cir. 1992); PFZ Properties v. Rodriguez, 928 F.2d 28, 30 (1st Cir.
5 1991). "Under the Due Process Clause of the Fourteenth Amendment,
6 persons who possess a property interest... cannot be deprived of that
7 interest without due process of law." Figueroa-Serrano v. Ramos-
8 Alverio, 221 F.3d 1, 6 (1st Cir. 2000).

9 Defendants argue that there was no such deprivation in the
10 instant case "since it was the Honorable Judge the one that issued
11 the arrest warrant in a contempt hearing held against him for failure
12 to pay alimony." Motion to Dismiss (docket No. 62) p.12; Motion for
13 Judgment on the Pleadings (docket No. 63) p. 12.

14 We disagree with defendants' reading of the Arrest Warrant. The
15 court Order specifically directed the marshal, upon plaintiff's
16 arrest, to take him before a magistrate who would be the one
17 responsible for ordering plaintiff's incarceration absent evidence of
18 payment of the \$10.000.00. It is uncontested that the defendants who
19 executed the arrest warrant by-passed the magistrate - an essential
20 step for due process compliance - and took him directly to prison.

21 Accordingly, the petition to dismiss the due process claim is
22 **DENIED**.

23 **QUALIFIED IMMUNITY**

24 Qualified immunity shields officials from having to pay for
25 damages resulting from violations of § 1983 provided certain
26 particular circumstances are present. "The doctrine of qualified

1 CIVIL NO. 03-2238 (RLA)

Page 12

2 immunity 'provides a safe harbor for a wide range of mistaken
3 judgments.'" Kauch v. Dep't for Children, Youth and Their Families,
4 321 F.3d 1, 4 (1st Cir. 2005) (citing Hatch v. Dep't for Children,
5 Youth and Their Families, 274 F.3d 12, 19 (1st Cir. 2001)).
6

7 The Court will follow a three-part inquiry in ascertaining
8 whether or not a defendant is entitled to protection. Initially, the
9 Court will consider "whether the plaintiff's allegations, if true,
10 establish a constitutional violation." Whalen v. Mass. Trial Court,
11 397 F.3d 19, 23 (1st Cir. 2005). If so, the Court will proceed to
12 determine "whether the right was clearly established at the time of
13 the alleged violation." *Id.* "Finally, we ask whether a similarly
14 situated reasonable official would have understood that the
15 challenged action violated that right." *Id.*

16 Thus, "qualified immunity remains available to defendants who
17 demonstrate that they acted objectively reasonably in applying
18 clearly established law to the specific facts they faced." Burke v.
19 Town of Walpole, 405 F.3d 66, 8 6 (1st cir. 2005). In other words,
20 whether "an objectively reasonable official in the defendants'
21 position would not necessarily have understood that his action
22 violated plaintiff's rights". Whalen, 397 F.3d at 28.

23 Because qualified immunity is an affirmative defense it is
24 defendant's burden to present evidence of its applicability. Dimarco-
25 Zappa, 238 F.3d at 35.
26

1 CIVIL NO. 03-2238 (RLA)

Page 13

2
3 Defendants initially contend that plaintiff failed at the first
4 step in that no constitutional violation has been alleged. In the
5 alternative, defendants argue that their conduct was "objectively
6 reasonable".

7 However, the motions currently before the Court are not summary
8 judgment petitions but rather the requests are premised on the
9 failure to state a claim under Rule 12(b)(6) and judgment on the
10 pleadings pursuant to Rule 12(c) both of which mandate that the Court
11 accept all factual allegations of the pleading as true. As previously
12 discussed, the Amended Complaint specifically charges defendants with
13 violations of decedent's Fourth Amendment and Due Process rights.
14 Based on the facts as plead the Court cannot possibly infer
15 defendants' objective belief that their conduct was constitutionally
16 sound.

17 Accordingly, the qualified immunity defense is found inapposite.

18 **SUPPLEMENTAL JURISDICTION**

19 Because we have declined defendants' requests to dismiss the
20 federal claims, we shall retain supplemental jurisdiction over the
21 pendent state-law claims pursuant to 28 U.S.C. § 1336.

22

23

24

25

26

1 CIVIL NO. 03-2238 (RLA)

2 Page 14

3 **CONCLUSION**

4 Based on the foregoing, defendants' Motion to Dismiss (docket
5 No. **62**)² and the Motion for Judgment on the Pleadings (docket No. **63**)³
6 are hereby disposed of as follows:

7 - The allegations against Santiago and Perez-Febus in their
8 capacity as supervisors in this case are hereby **DISMISSED**.
9 Judgment shall be entered accordingly.

10 - The remainder of the requests are hereby **DENIED**.

11 IT IS SO ORDERED.

12 San Juan, Puerto Rico, this 2nd day of July, 2007.

13
14 S/Raymond L. Acosta
RAYMOND L. ACOSTA
15 United States District Judge
16
17
18
19
20
21
22
23
24

25 ² See, Opposition (docket No. **71**).

26 ³ See, Opposition (docket No. **73**).